IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1009 OF 2003

Mrs.H.D.Singh and Anr. .. ..Petitioners

Versus

The State of Maharashtra & Ors. .. ..Respondents

Mr.S.V.Marwadi for petitioenrs

Mrs.Smita G.Dandige for respnodent no.2

Mr.S.S.Pednekar, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 8TH NOVEMBER, 2006

P.C.:

1. This Criminal Writ Petition under Article 227 of the Constitution of India read with Section 482 of Criminal Procedure Code is directed against the order passed by the learned Metropolitan Magistrate 44th court, Andheri, Mumbai on 28.5.2002 in Case NO.46/S/1992, which is confirmed by the Sessions Court on 4.2.2003 in Criminal

Revision Application No.432 of 2002.

2. Admittedly, the applicants/petitioners before me are the accused in the above criminal case and during the pendency thereof they made an application for leading evidence. In other words, upon an interlocutory application made during the course of trial the impugned orders have been passed.

3. The matter appeared before this court for admission from time to time and this court was informed that the original complainant and parties are working out an over all settlement. A civil suit is also filed in this court on the original side which is pending. Hence, the settlement would cover claims therein as well.

4. It appears that the entire complaint arose out of the rights to develop a property admeasuring 921 sq. yards situate in Vile-Parle, Mumbai. The area 921 sq. yards according to the respondent no.2 belongs to her and no rights in respect thereof were created in favour of respondent no.3 Builders.

5. However, the petitioners contended that

development rights were given to them and the property was developed. Therefore, it is incorrect to state that no rights were conferred in their favour. Be that as it may, both the sides have tendered consent terms, which are duly signed on behalf of the petitioners by petitioner no.2 and by respondent no.2 also her advocate.

6. Mr. Mardwadi, appearing for petitioners state that the first petitioner ceases to have any association with the respondent no.3 company and it is been represented by the petitioner no.2. The consent terms are signed by the petitioner no.2 on behalf of himself so also the respondent no.3.

7. Under the consent terms the respondent no.2 confirms having received a sum of Rs.11 lacs by Pay Order. Upon receipt of the sum she has given up all claims against the petitioners and the respondent no.3. In such circumstances, she does not wish to continue the criminal proceedings so also the pending suit. Parties have agreed that upon receipt of the sum and further the petitioners giving up all their right, title and interest in the portion of 921 sq. yards of the subject property, all claims between them have come to an end and none have any

claim against each other. There are appropriate undertakings recorded and it is made clear before me that these consent terms would not in any manner affect the right, title and interest of the Cooperative Housing Society, which is formed by the flat purchasers of the portion of this 921 sq. yards and the said Cooperative Housing Society would be exclusively entitled to the said property. The consent terms record that the second respondent would duly convey the property now to this cooperative housing society. All responsibilities including compliance with the provision of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 shall be that of the 2nd respondent and the petitioners will have no responsibility or liability in that behalf.

8. Consent Terms duly signed and tendered are taken on record and marked as "X" for identification. Undertakings accepted.

9. In the light of the consent terms criminal case No.46/S/92 shall come to an end. Needless to state that all proceedings in the said criminal case are quashed and set aside. The impugned order therefore does not survive.

(S.C.Dharmadhikari, J.)